

June 5, 2024 2:36 PM

U.S. DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

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**MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
PERSON IN FEDERAL CUSTODY**

| | |
|---|---|
| United States District Court | District <u>Western Dist of Michigan</u> |
| Name (under which you were convicted): <u>Daniel Dario Trevino</u> | Docket or Case No.: <u>1:18-cr-00166</u> |
| Place of Confinement: | Prisoner No.: <u>22341-040</u> |
| UNITED STATES OF AMERICA | Movant (include name under which convicted) <u>v. Daniel Dario Trevino</u> |

1:24-cv-589

Paul L. Maloney
U.S. District Judge**MOTION**

1. (a) Name and location of court that entered the judgment of conviction you are challenging: Western District of Michigan, 410 West Michigan Ave, Kalamazoo Michigan 49007

(b) Criminal docket or case number: 1:18-cr-00166

2. (a) Date of the judgment of conviction: 8-23-2019

(b) Date of sentencing: 1-28-2020

3. Identify all counts and crimes for which you were convicted and sentenced in this case: Count 1: Conspiracy to Manufacture, Distribute, and Possess with Intent to Distribute 1,000 Grams or More of Marijuana 21 U.S.C. §§ 846, 841(a)(1), and (b)(1)(B)(vii) 5 years to 40 years imprisonment/ \$5,000,000 fine (Class B Felony) Counts 2, 6, 8, 9, and 10: Maintaining a Drug-Involved Premises 21 U.S.C. § 856(a)(1), and (b) Not more than 20 years imprisonment/\$250,000 fine (Class C Felony) Count 3, and 4: Manufacture of Marijuana 21 U.S.C. 841(a)(1), and (b)(1)(D) Not more than 5 years imprisonment/ \$250,000 fine (Class D Felony) Count 5: Possession with intent to Distribute Marijuana 21 U.S.C. 841(a)(1), and (b)(1)(D) Not more than 5 years imprisonment/\$250,000 fine (Class D Felony) Count 7: Manufacture of 100 plants or More of Marijuana 21 U.S.C. 841(a)(1), and (b)(1)(B)(vii) 5 years to 40 years imprisonment/ \$5,000,000 fine (Class B Felony)

Count 3, and 4: Manufacture of Marijuana 21 U.S.C. 841(a)(1), and (b)(1)(D) Not more than 5 years imprisonment/ \$250,000 fine (Class D Felony) Count 5: Possession with intent to Distribute Marijuana 21 U.S.C. 841(a)(1), and (b)(1)(D) Not more than 5 years imprisonment/\$250,000 fine (Class D Felony) Count 7: Manufacture of 100 plants or More of Marijuana 21 U.S.C. 841(a)(1), and (b)(1)(B)(vii) 5 years to 40 years imprisonment/ \$5,000,000 fine (Class B Felony)

4. Length of sentence for each count or crime for which you were convicted in this case: 188 Months on Counts One, Two, Six, Eight, Nine, Ten, and Seven, and a term of 60 Months on counts Three, Four, and Five all those terms to be served concurrently (R. 279, Sentencing, P6ID. 3919)

5. (a) What was your plea?

Not guilty

Guilty

Nolo contendere (no contest)

☒

☐

☐

(b) If you entered a guilty plea to one count or charge, and a not guilty plea to another count or charge, give details:

6. If you went to trial, what kind of trial did you have? (Check one)

- (a) Jury ☒
(b) Judge only ☐

7. Did you testify at the trial? Yes ☒ No ☐

8. Did you appeal from the judgment of conviction? Yes ☒ No ☐

9. If you did appeal, answer the following:

(a) Date you filed: 6-3-2020

(b) Name of court: Sixth Circuit

(c) Docket or case number: 20-1104

(d) Result: Affirmed

(e) Date of result: July 30, 2021

(f) Grounds raised: SEE ATTACHMENT 1

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☒ No ☐

If "Yes," answer the following:

(1) Date you filed: 12-28-2021

(2) Docket or case number: 21-6722

(3) Result: Denied

(4) Date of result: Feb 22, 2022

(5) Grounds raised: See Attachment 2

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court? NO

11. If your answer to Question 10 was "Yes," give the following information: Yes ☐ No ☐

- (a) (1) Date you filed: N/A
- (2) Name of court: _____
- (3) Docket or case number (if you know): _____
- (4) Date of filing (if you know): _____
- (5) Nature of the proceeding: _____
- (6) Grounds raised: _____
- _____
- _____
- _____
- _____

(7) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☐

(8) Result: _____

(9) Date of result: _____

(b) If you filed any second motion, petition, or application, give the same information:

(1) Date you filed: N/A

(2) Name of court: _____

(3) Docket or case number (if you know): _____

(4) Date of filing (if you know): _____

(5) Nature of the proceeding: _____

(6) Grounds raised: _____

(7) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☐

(8) Result: _____

(9) Date of result : _____

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☐ No ☐

(2) Second petition: Yes ☐ No ☐

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

N/A

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: See Attachment Ground 1
See Attachment Ground 1

(a) Supporting FACTS (Do not argue or cite law. Just state the specific facts that support your claim.):

See Attachment Ground 1
See Attachment Ground 1

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue? Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition or application? Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Date motion was filed: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number: _____

Result (attach a copy of the court's opinion and order, if available): _____

Date of result: _____

(3) Did you receive a hearing on your motion? Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition or application? Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal? Yes ☐ No ☐

If yes, answer the following:

Date you filed: _____

Name of court where the appeal was filed: _____

Docket or case number: _____

Result (attach a copy of the court's opinion and order, if available): _____

Date of result: _____

GROUND TWO: See Attachment Ground 2

(a) Supporting FACTS (Do not argue or cite law. Just state the specific facts that support your claim.): _____

See Attachment Ground 2

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue? Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition or application? Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Date motion was filed: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number: _____

Result (attach a copy of the court's opinion and order, if available): _____

Date of result: _____

(3) Did you receive a hearing on your motion? Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition or application? Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal? Yes ☐ No ☐

If yes, answer the following:

Date you filed: _____

Name of court where the appeal was filed: _____

Docket or case number: _____

Result (attach a copy of the court's opinion and order, if available): _____

Date of result: _____

GROUND THREE: See Grand 3 § 2255

(a) Supporting FACTS (Do not argue or cite law. Just state the specific facts that support your claim.): _____

See Grand 3 § 2255

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue? Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition or application? Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Date motion was filed: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number: _____

Result (attach a copy of the court's opinion and order, if available): _____

Date of result: _____

(3) Did you receive a hearing on your motion? Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition or application? Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal? Yes ☐ No ☐

If yes, answer the following:

Date you filed: _____

Name of court where the appeal was filed: _____

Docket or case number: _____

Result (attach a copy of the court's opinion and order, if available): _____

Date of result: _____

GROUND FOUR: See Grand 4 § 2255

(a) Supporting FACTS (Do not argue or cite law. Just state the specific facts that support your claim.): _____

See Grand 4 § 2255

(b) Direct Appeal of Ground Four

(1) If you appealed from the judgment of conviction, did you raise this issue? Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: _____

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition or application? Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Date motion was filed: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number: _____

Result (attach a copy of the court's opinion and order, if available): _____

Date of result: _____

(3) Did you receive a hearing on your motion? Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition or application? Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal? Yes ☐ No ☐

If yes, answer the following:

Date you filed: _____

Name of court where the appeal was filed: _____

Docket or case number: _____

Result (attach a copy of the court's opinion and order, if available): _____

Date of result: _____

GROUND FIVE

Prosecutor Misconduct led to a
5th and Sixth Amendment violations

(a) Supporting FACTS (Do not argue or cite law. Just state the specific facts that support your claim.):

1. In 2018, Trevino was federally charged for his medical marijuana activities and hired attorney Nicholas J Bostic
2. Two weeks before trial Trevino terminated Bostic's services, the federal prosecutor filed a motion in opposition, claiming that the prosecutors' office had sent out subpoenas all over the country and that one witness needed international travel
3. At trial, none of the Government's witnesses testified from being outside of Michigan, and it was discovered that the witness needing international travel was actually named Harpreet Rocky Singh who actually lived in Lansing Mich.
4. Mr. Singh, who owned the plaza where Trevino rented a suite, had been recorded in local news media (Lansing City Pulse) stated that he likes to VACATION IN INDIA, but never mentioned he lived there SEE Exhibit 10
5. The federal prosecutor was aware of this information and knew that there was no need to send subpoenas all over the country. Or that no witnesses needed international travel.
6. The federal prosecutors false claims about Harpreet Rocky Singh's international travel need and the need to send out subpoenas all over the country were made to prevent Trevino from hiring new counsel of his choice for trial.
7. Trevino's request to hire new counsel was denied by the federal judge based on the false information provided by the federal prosecutor. -CONTINUED ON ATTACHMENT GROUND 5-

(b) Direct Appeal of Ground Five;

(1) If you appealed from the judgment of conviction, did you raise this issue? Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: _____

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition or application? Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Date motion was filed: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number: _____

Result (attach a copy of the court's opinion and order, if available): _____

Date of result: _____

(3) Did you receive a hearing on your motion? Yes ☐ No ☐(4) Did you appeal from the denial of your motion, petition or application? Yes ☐ No ☐(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal? Yes ☐ No ☐

If yes, answer the following:

Date you filed: _____

Name of court where the appeal was filed: _____

Docket or case number: _____

Result (attach a copy of the court's opinion and order, if available): _____

Date of result: _____

GROUND SIX GROUND 6: Ineffective assistance of counsels in violation of the Sixth Amendment

Supporting Facts a) _____

1. Trevino hired attorneys Mr. Bostic for trial. Two months before sentencing Trevino hired Mr. Friedman to help Mr. Bostic and to help establish the record for Appeal
2. Count 7 of the indictment in U.S.A - v -Trevino is duplicitous as it improperly combines three separate offenses into a single count. Specifically, Count 7 charges Trevino with manufacturing marijuana at three distinct locations: 1523 S. Cedar in Lansing Michigan, 3308 S. Cedar St. Lansing Michigan; and 611 Maplehill ave Lansing Mi.
3. The Government in Count 7 of the Superseding indictment combined three locations into one location and named the location "Ingham County" (R. 106, PGID. 742)
4. SUPPORTING FACTS: -1528 S. Cedar was a medical marijuana farmers market which included individual caregivers who rented tables to sell their own medical marijuana plants and products. These licensed Michigan Medical Marijuana caregivers took their medical marijuana plants and products home if they didn't sell them at the end of the day or shift.
-3308 S. Cedar St.: a regular dispensary selling medical marijuana plants and products to licensed patients or caregivers.
-611 Maplehill Ave: Trevino's personal residence where Trevino grew 11 plants for personal use.

-CONTINUED ON ATTACHMENT GROUND 6-

(b) Direct Appeal of Ground SIX;(1) If you appealed from the judgment of conviction, did you raise this issue? Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: _____

(c) Post-Conviction Proceedings:(1) Did you raise this issue in any post-conviction motion, petition or application? Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Date motion was filed: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number: _____

Result (attach a copy of the court's opinion and order, if available): _____

Date of result: _____

(3) Did you receive a hearing on your motion? Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition or application? Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal? Yes ☐ No ☐

If yes, answer the following:

Date you filed: _____

Name of court where the appeal was filed : _____

Docket or case number: _____

Result (attach a copy of the court's opinion and order, if available) : _____

Date of result: _____

(a) Supporting FACTS (Do not argue or cite law. Just state the specific facts that support your claim.): _____

1. Rule 48(b) of the Federal Rules of Criminal procedure, Rule 48(b) is about the dismissal of an indictment information, or complaint by the court, it states that the court may dismiss a charge if unnecessary delay occurs in: (1) presenting a charge to a grand jury; (2) filing an information against a defendant; or (3) bringing a defendant to trial. This rule is intended to protect the rights of the defendant and the public interest in the speedy administration of justice.
2. Trevino operated a medical marijuana dispensary in Michigan from approximately 2009 until December 22nd 2017 known as Hydroworld LLC.
3. Evidence reveals that DEA Agent Chris Scott had been surveilling Trevino since 2009

TREVINO IS "NOT ARGUING A SPEEDY TRIAL VIOLATION"

4. Trevino is not arguing a speedy trial violation but instead raises a "pre-arrest delay argument", nor is Trevino arguing the statute of limitation violation. The significant delay between alleged criminal activities and indictment has prejudiced him. Such as SUPER INCREASED MEDICAL MARIJUANA SALES TO licensed medical marijuana patients from licensed caregivers that worked for Hydroworld.
5. This pre-arrest delay substantially prejudices Trevino's right to a fair trial.

TACTICAL ADVANTAGE GAINED BY THE PROSECUTOR

6. STRATEGIC TIMING: Waiting for 9 years (10 years if including the superseding indictment) allowed the prosecution to exploit tactical advantages such as sales growth. In the prior proceeding Agent Chris Scott testified to surveilling Trevino's

-CONTINUED ON GROUND 7-

(b) Direct Appeal of Ground Seven:

(1) If you appealed from the judgment of conviction, did you raise this issue? Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: _____

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition or application? Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Date motion was filed: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number: _____

Result (attach a copy of the court's opinion and order, if available): _____

Date of result: _____

(3) Did you receive a hearing on your motion? Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition or application? Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal? Yes ☐ No ☐

If yes, answer the following:

Date you filed: _____

Name of court where the appeal was filed: _____

Docket or case number: _____

Result (attach a copy of the court's opinion and order, if available): _____

Date of result: _____

GROUND 8: Ineffective Assistance of Counsels in violation of the Sixth Amendment and Fifth Amendment Violation.

1. Petitioner Trevino was convicted in the Western District of Michigan on multiple Counts related to his medical marijuana dispensary known as Hydroworld LLC between the years of 2010-2017.
2. Trevino Hired attorney Nicholas J Bostic to represent him for trial. Two months prior to sentencing Trevino hired attorney Stuart Friedman to help Mr. Bostic with Sentencing issues and to prepare the record for direct appeal.
3. Counts Two, Six, Eight, Nine, and Ten charged Trevino with Maintaining a Drug Establishment in violation of 21 U.S Code 856(a)(1) and (b) (R. 279).
4. At sentencing, this Court imposed a base offense level under the United States Sentencing Guideline that accounted for the nature of the premises (R. 279, PGID. 3919). However, the Court Further imposed a two-level enhancement under USSG section 2D1.1(b)(12). This effectively punished Trevino twice for the same underlying conduct, resulting in a sentence significantly higher.

ARGUMENT

5. Strickland v Washington, 466 U.S 668, 686 (1984) (1) deficient performance (2) prejudice and probability of a different outcome in the proceedings.
6. Trevino's attorneys failed to do a meaningful investigation and argue during sentencing phase that because Trevino was

(b) Direct Appeal of Ground Eight:(1) If you appealed from the judgment of conviction, did you raise this issue? Yes ☐ No ☒(2) If you did not raise this issue in your direct appeal, explain why: Wasn't ripe**(c) Post-Conviction Proceedings:**(1) Did you raise this issue in any post-conviction motion, petition or application? Yes ☐ No ☐

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Date motion was filed: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number: _____

Result (attach a copy of the court's opinion and order, if available): _____

Date of result: _____

(3) Did you receive a hearing on your motion? Yes ☐ No ☐(4) Did you appeal from the denial of your motion, petition or application? Yes ☐ No ☐(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal? Yes ☐ No ☐

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, state which ground or grounds have not been presented and your reasons for not presenting them:

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes ☐ No ☒

If "Yes," state the date of filing, the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: J. Nicholas Bostic Prior to Federal Sentencing and up to
Sentencing 909 N. Washington Ave Lansing MI & Stuart Friedman represented
me prior to Federal Sentencing and at Direct Appeal
26777 Central Park Blvd #300, Southfield Michigan

(b) At arraignment and plea: J. Nicholas Bostic

(c) At trial: J. Nicholas Bostic

(d) At sentencing: Stuart Friedman

J. Nicholas Bostic

(e) On appeal: Stuart Friedman

(f) In any post-conviction proceeding: N/A

(g) On appeal from any ruling against you in a post-conviction proceeding: N/A

16. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging?
Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: _____

(b) Give the date the other sentence was imposed: _____

(c) Give the length of the other sentence: _____

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*

This § 2255 motion is Timely, The District Court
allowed Extensions of time to file § 2255. The District Court
eventually granted Trevino up until Oct 19, 2023 to file
his § 2255 motion

Therefore, movant asks that the Court grant the following relief:

or any other relief to which movant may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct

~~and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on~~

(month, date, year).

Executed (signed) on 6-5-2024 (date).

Daniel Herin

Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.